

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 822
Case No. 95-13
(Text Amendments - Department Stores and Bonus
Density for Retail Uses, Downtown Development District)
July 14, 1997

The Zoning Commission for the District of Columbia initiated this case in response to a memorandum from the Office of Planning (OP) requesting the Commission to consider four amendments to the text of Chapter 17 of Title 11 District of Columbia Municipal Regulations (DCMR), Zoning. Amendments to the text of the Zoning Regulations are authorized pursuant to the Zoning Act [Act of June 20, 1938, 52 Stat. 797, as amended, D.C., Code Ann. Section 5-413 (1981)].

The Office of Planning memorandum filed on September 1, 1995 and supplemented on November 9, 1995, requested the Zoning Commission to consider four amendments to the text of Chapter 17 of Title 11. The proposed amendments relate to retail uses, department stores and bonus density in the Downtown Shopping District or Retail Core. The amendments would provide greater flexibility for the reuse of existing department store buildings; provide increased incentives in the form of bonus office density and transferable development rights (TDRs) for major retailers and multi-level retail uses in a building; and would broaden the geographic applicability of bonus arts uses in the SHOP District. Additionally, the proposed text amendments are intended to increase the opportunity for department store buildings to be devoted to retail and entertainment uses rather than primarily office space. The immediate effect will impact three critical sites -- Garfinckel's, Woodward and Lothrop and the Thurman Arnold building.

At its regular public meeting of September 11, 1995, the Commission authorized a public hearing on the petition.

The public hearing in this case was properly noticed for December 7, 1995. The December 7th hearing session was canceled so that the executive branch could submit modifications to the advertised text. Pursuant to further notice, a rescheduled public hearing was held on January 18, 1996. The hearing session was conducted in accordance with the provisions of 11 DCMR 3021.

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At that hearing session, the Commission heard the presentation of the Office of Planning (OP), the testimony of Councilmember Charlene Drew Jarvis, Advisory Neighborhood Commission (ANC) 2A and organizations in support and in opposition.

Councilmember Charlene Drew Jarvis through testimony presented at the public hearing supported the OP proposal and eliminate the strict prohibition against converting an existing department store to nonretail uses.

OP by report dated January 16, 1996 and by testimony presented at the hearing indicated that this case has two major parts.

The first proposed new incentives for retail uses in the SHOP subarea generally. The Zoning Commission had already adopted the reduced retail requirements as enacted by the Council in the Comprehensive Plan Amendments Act of 1994. The advertised, additional bonus density for Major Retail/Entertainment Store, Anchor Store, and retail uses in excess of the required ground floor space carried out the companion, incentive policy in the same legislation. The existing 3:1 bonus for department store use continued to be available.

The second part of the case related to existing department stores. The advertised amendments would allow department stores to be converted as a matter of right to all retail and entertainment uses (rather than to require maintenance of department store use). Conversion in whole or in part to other uses, typically office space, would continue to require approval of a use variance by the Board of Zoning Adjustment (BZA).

OP favored retention of the use variance standard for conversion because of the importance of maximizing the chances of retail-entertainment and "magnet" uses occupying department store spaces. The special exception text was originally proposed by OP as part of the SHOP district in 1988. It was needed because of the high mandatory retail requirement (2.0/1.5 FAR) that was being adopted for all new or altered buildings. A mechanism for reasonable deviations was needed. Now the general requirement was only 0.5 FAR, and flexibility for exceptions was much less necessary. The department store sites were critical opportunity sites (and existing buildings) that were very difficult to replicate.

The proposed date for the applicability of the revised department store provisions was January 18, 1991, the date of the adoption of the Downtown Development District (DDD), which incorporated the previously adopted SHOP District (but without the special exception provision). If this date were adopted, it would enable the reuse

of the Garfinckels site to proceed as agreed to by the city and the BZA three years prior to the onset of this case. At the time this hearing began, the Garfinckels case had been delayed by litigation.

The agreement with the city would require no more than three retailers to occupy the 56,000 s.f. of space reserved for retail uses in the building.

Advisory Neighborhood Commission (ANC) 2A submitted a resolution dated December 28, 1995 and presented testimony at the public hearing. The ANC believed that the proposed text changes constituted part of a continuing erosion of the living Downtown elements. The ANC believes, as proposed, the amendments would eliminate the Garfinckel's site from the department store category, and that there was too much subjectivity in the new options.

Testimony in support and in support of the proposed amendments with modifications was presented by the D.C. Preservation League; Western Development Corporation; the law firm of Wilkes, Artis, Hedrick and Lane; The Committee of 100 on the Federal City; the Downtown Cluster of Congregations and one private citizen from the Foggy Bottom/West End area of the District of Columbia. The salient issues raised at the hearing are summarized as follows:

1. In the District, the last best opportunity for a major retail-entertainment complex is the Woodward and Lothrop building. This building should be 100 percent retail-entertainment complex.
2. A retail-entertainment complex as a major destination at Metro Center would result in jobs for District residents and higher tax revenues, due to sales and income taxes.
3. The advertised special exception option for converting department store space is critical. Otherwise, the District may lose out on a developer who is unable to provide 100 percent retail-entertainment, but can do 50, 60 or 80 percent. It is better to have the standards set forth in the special exception criteria than the extremely difficult case that must be made for a use variance. The text requires compliance with all provisions.
4. The Board of Zoning Adjustment should be authorized to approve alternative uses as a special exceptions, rather than as use variances.

5. Regarding the special exception, the high use standard is needed, otherwise the Downtown property owners will apply to opt out of the preferred use requirements. Garfinckels should operate with the same proposed rules as will other department store sites. They can convert to all retail-entertainment uses as a matter of right.
6. The proposed text changes constitute part of a continuing erosion of the living Downtown elements. Garfinckels would be lost as a department store space.
7. The proposed date of January 18, 1991 is capricious and lacks a basis. Garfinckels should not be exempt.

On March 11, 1996 at its regular monthly meeting, the Zoning Commission considered this case for decision. At that meeting, the Commission took preliminary action to decide several aspects of the case. The Commission preliminarily decided that the entire gross floor area of a department store may convert as a matter of right to preferred retail, service and arts-related uses as listed in Sections 1710 and 1711 of Chapter 17 provided, that at least 50 percent of the gross floor area would be for retail and restaurant use. Additionally, the Commission preliminarily determined that any deviation from the matter of right allowance would require review and approval by the Board of Zoning Adjustment pursuant to Subsection 3107.1 of the Zoning Regulations.

At its regular monthly meeting of April 8, 1996, the Zoning Commission considered a supplemental report from the Office of Planning, and a motion of the Washington Opera for a limited additional public hearing. The supplemental report presented by the OP contained revised language that was not previously considered by the Commission during the public hearing on January 18, 1996 or the public meeting on March 11, 1996. The motion of the Washington Opera requested a limited additional hearing on the issue of whether a department store use in existence and operating as of January 18, 1991, if converted to other preferred uses, should be required to devote a minimum of 50 percent of its floor area to retail and restaurant use.

The Commission determined that it would set a further hearing in this case to consider limited issues. In so doing, the Commission granted the motion of the Washington Opera and specified several other issues to be considered during the further public hearing. The limited issues on which the Commission took testimony included:

1. Whether at least 50 percent of the gross floor area of a department store in existence and operating as of January 18, 1991 should be devoted to retail uses as specified in Section 1710 and by restaurants;
2. Whether residential uses as defined in Section 1799 should be added to those uses allowed in the remaining gross floor area of the former department store;
3. The revised definition of "anchor store"; and
4. Whether the special exception provision proposed by Commissioner Herbert M. Franklin is more appropriate than the use variance provision proposed by the Office of Planning.

The Office of Planning proposed the following revised text:

1702.5 A department store in existence and operating as of January 18, 1991, shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot unless approved by the Board of Zoning Adjustment pursuant to Subsection 3107.2 of this title; Provided, that:

- a. At least fifty percent (50%) of the gross floor area shall be occupied by retail uses as specified in Section 1710 and by restaurants;
- b. The remaining gross floor area of the former department store space may be converted as a matter of right to any combination of retail, service, arts and entertainment uses as specified in Sections 1710 and 1711 or to residential uses as defined in Section 1799 of the chapter;
- c. The gross floor area of the department store space after conversion may include a reduction in floor area to accommodate a new atrium or light well; and

- d. A department store that existed as of the adoption of the SHOP District on March 13, 1989, but which was no longer in existence and operating as of the adoption of the Downtown Development District on January 18, 1991, may be converted to any uses permitted in the underlying zone district provided that retail and related uses as specified in Sections 1710 and 1711 shall occupy no less than 2.0 FAR equivalent in the converted or restructured building.

The proposed definition for anchor store:

Anchor store - a single retail store, having 30,000 square feet or more of gross leasable area, and which is operated under single management and usually a single certificate of occupancy. An anchor store may include entertainment, recreation or arts functions that are necessary to the principal retail use, or which have a separate certificate of occupancy for a portion of the total floor area. Such subordinate uses may include eating and drinking, performance or visual art, limited recreational areas, children's play areas, audio and video displays, interactive electronics and similar functions.

Pursuant to notice, public hearing sessions were held by the Zoning Commission on June 20 and June 24, 1996 to consider the limited issues.

At those hearing sessions, the Commission heard testimony from 25 witnesses including District of Columbia Councilmembers, the Office of Planning, ANCs 2C and 2F, representatives from law firms, various citizens groups, local unions and interested citizens. A number of the witnesses were from the Washington Opera or were supporters of the Opera at the Woodies site.

The Office of Planning, by report dated June 19, 1996 and by testimony presented at the hearing recommended adoption of proposed Section 1702.5 to allow conversion of a former department store to preferred uses without a minimum retail requirement (proposed paragraph (a)). The report also recommended revision to proposed paragraph (c) to allow reconfiguration or rearrangement of floor area to accommodate new uses. The report recommended against allowing conversion to residential uses and against the proposed special exception provision to reduce the percentage of retail uses as unnecessary if no percentage of minimum retail required is

adopted. Finally, the report recommended changing the minimum size of an anchor store from 30,000 square feet to 25,000 square feet. Issues raised by the Commission and discussed by OP included: (1) the role of the Interactive Downtown Task Force; (2) the need for enough retail Downtown to maintain the function of the retail core; (3) the need

for retail on the ground floor; (4) the economic impacts on the District of Columbia; (5) alternative sites for the Opera; and (6) alternative sites for retail.

ANC-2C by report dated May 3, 1996 voted to support adoption of the text amendments which would allow department store buildings to be converted to other preferred retail service, arts and entertainment uses without a requirement that a specified percentage be devoted to retail uses.

ANC-2F by report dated June 6, 1996 voted to support the proposed text amendment which would allow former department stores to be converted to other uses permitted in Sections 1710 and 1711 without a use variance; and opposed any requirement that specified percentage of floor area be devoted to retail uses listed in Section 1710 and restaurants.

Councilmembers Jack Evans, John Ray, Charlene Drew Jarvis and Harold Brazil supported the use of the Woodward & Lothrop building by the Washington Opera, citing economic benefits, its contribution to the living Downtown, the enhancement of the overall image of the city and the additional use of Metro. Councilmember Jarvis raised the possibility of a memorandum of understanding between the Opera and the District to cover what would happen to the building in the unlikely event that the Opera did not proceed with its project.

On July 1, 1996, at its regular public meeting, the Commission reviewed and discussed the OP summary abstract dated June 27, 1996 and all written material in the record to evaluate the evidence of the record of the case. The Commission determined that the testimony presented at the hearing did not focus on the total scope of the text amendments that were advertised in the notice of public hearing, rather the testimony focused mainly on the Washington Opera's purchase of the Woodies building. The Commission concurred with the testimony in the record that while the Opera may not be the highest and best use of the property, it may create a special character for the downtown that may broaden the mix of uses.

The Commission was further persuaded by the testimony in the record of the case that retail in the Washington metropolitan area has become a moving target attracted to the suburbs by the availability of open space and free parking. The Commission believes that the City has other retail spaces that are currently underutilized

because of the City's disadvantaged position in competing with the suburbs. The Commission believes that the Opera would generate new activities and focus new market and other opportunities in the downtown.

On July 1, 1996, the Commission took proposed action as follows:

- (a) Adopted Section 1702.2 and Paragraph 1702.5(a);
- (b) Adopted Paragraph 1702.5(c) which would become 1702.5(b), FAR adjustment for atrium or light well;
- (c) Adopted Paragraph 1702.5(d) which would become Paragraph 1702.5(c);
- (d) Adopted a provision that would not require the provision of residential uses in department store buildings;
- (e) Voted not to adopt the special exception provisions; and
- (f) Adopted the revision to Subsection 1702.4 deleting reference to department stores.

At that meeting, the Commission however, deferred action on some items relating to defining "anchor store", "retail entertainment store" and the related matter of the amount of bonus density/transferrable development rights (TDRs) earned by these uses. The Commission requested OP to reconcile the definition of anchor store in the reports of January 1996 and June 1996 and to identify and clarify other issues in a supplemental report for the August meeting.

On August 5, 1996, at its regular public meeting, the Commission reviewed and discussed the requested OP report dated July 26, 1996. The report addressed the issues which the Commission referred to OP for further study. The Commission considered the OP recommendation regarding the definition of anchor store, the applicable density, TDRs and bonus density relative to the case. The Commission concurred with OP that only one definition for anchor store is needed, instead, different size categories of anchor stores were established to provide rewards and incentives for very large stores. The OP report also recommended minor revisions to bonus density/TDR ratios for various categories of stores that were considered during the case to accommodate the revised store definitions.

On August 5, 1996, the Commission took proposed action to adopt the definition of anchor stores as revised by OP and adopted the bonus density/TDR ratios recommended by OP.

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A notice of proposed rulemaking was published in the District of Columbia Register on September 13, 1996. The notice of proposed action to amend the Zoning Regulations was also referred to the

Zoning Administrator (ZA) for comments and to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganizational Act.

As a result of the publication of the proposed rules, the Commission received comments from the law firm of Wilkes, Artis, Hedrick and Lane on behalf of the Washington Opera and the Services Employees International Union (SEIU) Local 82 and OP. The Wilkes, Artis, Hedrick and Lane letter supported the notice of proposed rulemaking. The SEIU letter opposed the notice of proposed rulemaking, specifically Subsection 1702.4 and Paragraph 1702.5(c).

At the Zoning Commission's October 21, 1996 monthly meeting, OP by report dated October 16, 1996 urged the Commission to adopt a modified schedule of bonus density/transferable development rights (TDRs) for anchor stores. The Commission took proposed action to approve the bonus density provision for a group of anchor stores as set forth in the October 16, 1996 OP memorandum.

A notice of proposed rulemaking was published in the District of Columbia register on December 20, 1996. The notice of proposed action to further amend the Zoning Regulations was also referred to the ZA, NCPC, OP and OCC.

The NCPC, by report dated February 7, 1997, found that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that its decision to approve the text amendments set forth in this order is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission has accorded Advisory Neighborhood Commissions 2A, 2C and 2F the "great weight" to which they are entitled.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the following amendments to the Zoning Regulations:

The specific proposed amendments are as follows:

1. Subsection 1702.4 of the area-wide use provisions, delete reference to "department store," so that the revised provision reads as follows:

1702.4 An existing theater, hotel or apartment house shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot unless such conversion or replacement has been reviewed and approved by the Board of Zoning Adjustment pursuant to Subsection 3107.2 of this title.

2. Add a new Subsection 1702.5 as indicated below, and renumber existing subsections 1702.5 through 1702.7 accordingly:

1702.5 A department store in existence as of March 13, 1989, shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot unless approved by the Board of Zoning Adjustment pursuant to Subsection 3107.2 of this title; Provided, that:

- (a) The entirety of the gross floor area may be converted as a matter of right to any combination of preferred retail, service and arts-related uses as listed in Sections 1710 and 1711 of this chapter;
- (b) The gross floor area of the department store space after conversion may include a reduction or rearrangement in floor area to accommodate a new atrium or light well, or different configuration of the new use or uses;
- (c) A department store that existed as of the adoption of the SHOP District on March 13, 1989, but which was no longer in existence and operating as of the adoption of the Downtown Development District on January 18, 1991, may be converted to any uses permitted in the underlying zone district provided that retail and arts-related uses as specified in Sections 1710 and 1711 shall occupy no less than 2.0 FAR equivalent in the converted or restructured building.

3. In Subsection 1799.1 (Definitions), amend the existing definition of anchor store to read as follows:

Anchor store - a single retail store, having 25,000 square feet or more of gross leasable area, and which is operated under single management and usually a single Certificate of Occupancy. An anchor store may include entertainment, recreation or arts functions that are accessory to the principal retail use, or which have a separate Certificate of Occupancy for a portion of the total floor area. Such subordinate uses may include eating and drinking, performance or visual art, limited recreational areas, children's play areas, audio and video displays, interactive electronic and similar functions.

4. Amend Subsection 1703.4 (SHOP subarea bonus provisions) by deleting the phrase "of the required 1.5 or 2.0 FAR equivalent" and inserting the phrase "as required by Subsection 1703.3" so that the subsection reads as follows:

1703.4 A building that provides gross floor area for preferred uses as required by Subsection 1703.3, and which includes any of the bonus uses indicated below, may count the floor area devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density;

5. Amend the SHOP subareas bonus schedule in Subsection 1703.4, by deleting paragraphs (b) and (c) and by inserting new paragraphs (b), (c) and (d) as follows:

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|-----|--|---|----|-----|
| (b) | Anchor store having 60,000 s.f. or more of gross leasable area. A complex of two (2) or more anchor stores in a single building that accommodates a total of at least 90,000 s.f. of gross leasable area devoted to anchor stores, legitimate theater; | 1 | to | 2 |
| (c) | Anchor store having 25,000 s.f. to 59,999 s.f. of gross leasable area; and | 1 | to | 1.5 |
| (d) | Movie theater; performing arts space; small, minority or displaced business; and other uses | 1 | to | 1 |

from sections 1710 and 1711 in excess of the 0.5 FAR equivalent required by Section 1704.3, not to be counted in addition to other bonus floor area earned from this Subsection, and not applicable to department store sites regulated by Subsection 1702.5.

6. Amend Subsection 1703.5 to read as follows:

1703.5 In the ARTS District sector of SHOP, as identified geographically in Paragraph 1703.3(d), and in Square 346, a building shall be eligible for the bonuses specified in paragraphs 1704.6(a), (b) and (c).

Vote of the Zoning Commission taken at the August 5, 1996 monthly meeting, is as follows:

1. Adopted the definition of anchor store as revised by OP by a vote of 4-0: (John G. Parsons, Herbert M. Franklin, Jerrily R. Kress and Maybelle Taylor Bennett, to adopt - Howard R. Croft abstained by absentee vote).
2. Amended and adopted the OP recommended bonus density/TDR ratio by a vote of 4-0: (Maybelle Taylor Bennett, John G. Parsons, Herbert M. Franklin and Jerrily R. Kress to adopt as amended - Howard R. Croft abstained by absentee vote).

Vote of the Zoning Commission taken at the October 21, 1996 monthly meeting to approve the bonus density provision for a group of anchor stores as set forth in the October 16, 1996 OP memorandum by a vote of 4-0: (Herbert M. Franklin, Maybelle Taylor Bennett, Jerrily R. Kress to adopt; John G. Parsons to adopt by absentee vote; Howard R. Croft not present, not voting).

Vote of the Zoning Commission taken at its regular monthly meeting on July 1, 1996 is as follows:


1. Adopted Subsection 1702.2 and Paragraph 1702.5(a) by a vote of 4-1: (Herbert M. Franklin, John G. Parsons, Maybelle Taylor Bennett and Jerrily R. Kress to adopt, Howard R. Croft opposed).
2. Adopted Paragraph 1702.5(c) which would become 1702.5(b), "FAR Adjustment for Atrium or Light Well" by a vote of 5-0: (John G. Parsons, Herbert M. Franklin, Howard R. Croft, Maybelle Taylor Bennett and Jerrily R. Kress, to adopt).

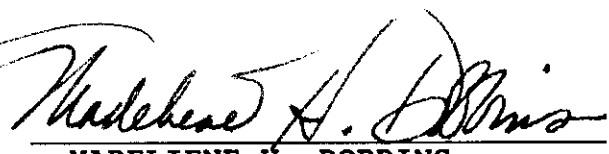
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3. Adopted Paragraph 1702.5(d) which would become Paragraph 1702.5(c) by a vote of 5-0: (Herbert M. Franklin, Maybelle Taylor Bennett, Jerrily R. Kress, Howard R. Croft and John G. Parsons to adopt).
4. Adopted a provision that would not require the provision of residential uses in department store buildings 4-0-1: (Herbert M. Franklin, Maybelle Taylor Bennett, Jerrily R. Kress and John G. Parsons to adopt - Howard R. Croft, abstained).
5. Not to adopt the special exception provisions by a vote of 5-0: (Herbert M. Franklin, Maybelle Taylor Bennett, John G. Parsons, Jerrily R. Kress and Howard R. Croft, to adopt).
6. Adopted the revision to Subsection 1702.4 deleting reference to department stores by a vote of 5-0: (Maybelle Taylor Bennett, Herbert M. Franklin, Jerrily R. Kress, John G. Parsons and Howard R. Croft to adopt).

This order was adopted by the Zoning Commission at its public meeting on July 14, 1997 3-0: (Jerrily R. Kress, Maybelle Taylor Bennett and John G. Parsons to adopt, Herbert M. Franklin, not present, not voting)

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on AUG 8 1997.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning

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